



State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark NJ 07102

ENERGY

In the Matter of the Energy Master Plan	}	<u>Decision & Order</u>
Phase II Proceeding to Investigate the	}	
Future Structure of the Electric Power	}	
Industry - Third Party Supplier Agreements	}	Docket Nos. EX94120585Y,
		EO97070457,
		EO97070460, EO97070463,
		EO97070466

(Service List Attached)

BY THE BOARD:

The Board of Public Utilities (Board), by Order dated October 5, 1998, required each of the State's four electric utilities to file a draft Third Party Supplier (TPS) Agreement with the Board within 45 days of its Order and also required the electric utilities to provide copies of the draft TPS Agreement to all of the parties on their respective restructuring service lists. The Board in its Order further instructed those parties interested in commenting on the proposed draft TPS agreements do so, with copies to the service list, by December 4, 1998, with reply comments due December 15, 1998.

On November 19, 1998, each of the four New Jersey electric utilities filed a draft TPS agreement with the Board and circulated copies to all parties. As part of the draft TPS Agreements, each electric utility included a schedule of fees to charge the TPSs for the cost to administer the various functions associated with retail choice.

Comments and reply comments were received in response to the filed draft TPS agreements. The draft TPS agreements were thereafter referred to the Load Profile and Settlement Working group for further review and attempted resolution among the parties. The four electric utilities were asked to meet and confer among themselves in a effort to formulate a single version of a draft TPS agreement that all four electric utilities could agree to sponsor. The electric utilities made substantial progress toward the creation of a single version, but were not able to finalize a single draft TPS agreement.

In an effort to reach consensus on the development of a single master TPS agreement, Staff held numerous working group meetings with the electric utilities, TPSs, and the Ratepayer Advocate (RPA) in

an attempt to resolve outstanding issues within the draft TPS Agreements. Successful efforts were made to resolve many of the outstanding issues by achieving consensus among the parties. At the same time the parties were able to identify areas of disagreements that appeared to be irreconcilable among the parties.

As a result of these discussions, on May 13, 1999, Staff advised the parties, that it intended to prepare a proposed Version 10 of the draft TPS agreement containing the agreed upon positions of the parties where consensus was achieved, as well as proposing a resolution of the issues for which consensus was not reached for the Board's consideration at its June 9th Agenda meeting. In order to give the parties an opportunity to express their positions on the outstanding issues for the record, a one week comment period was established for all interested parties, including the electric utilities, to submit comments to the Board.

In an attempt to reach further consensus among the parties on the outstanding issues with the expectation of developing a single master TPS agreement, several of the parties requested that they be given an opportunity to continue negotiations regarding the TPS agreement including the fee structure as proposed by the electric utilities. These parties requested that if significant progress was being made towards total consensus, Version 10 of the draft TPS agreement should not be considered by the Board at its June 9, 1999 public agenda meeting, to allow the parties additional time to continue to negotiate.

At its June 16, 1999 agenda meeting, the Board determined to subject the proposed fees filed in each of the electric utility's TPS agreements to an expedited evidentiary hearing process prior to the Board's final determination of the TPS fees.

In an attempt to reach full consensus on a master TPS agreement, Staff held additional working group meetings with the electric utilities, TPSs and the Ratepayer Advocate in an attempt to resolve outstanding issues in Version 10 of the draft TPS agreement, including the proposed fee structure in the draft TPS Agreements filed by the electric utilities. Those discussions were successful, in that significant progress was made towards development of a master TPS Agreement, where the electric utilities and TPSs (including MAPSA, Enron, Reliant Energy, First Energy, Keyspan Energy Services, NEV, Utilities.com, Hess, NEMA, E Cubed Company, Power Resource Managers, Energetix, Central Hudson Enterprises Corp.) reached an agreement on all of the outstanding issues, including the fee structure, whereby those parties opted in writing to either support or not oppose the attached Version 13 of the TPS Agreement. It should be noted that the Ratepayer Advocate participated in this process, and at those meetings remained silent regarding its position on the proposed Version 13 Master TPS Agreement.

At the Board's June 24, 1999 public agenda meeting, Staff presented the attached Version 13 Master TPS Agreement for the Board's consideration. Staff recommended that in light of the attached Master TPS Agreement wherein agreement had been reached among the electric utilities and TPSs, the Board suspend the evidentiary hearing process it approved at its June 16, 1999 agenda meeting on the fee structure proposed by the electric utilities in this matter. Instead, Staff proposed that the attached Version 13 Master TPS Agreement, including the fee structure, be circulated to all

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parties to give the parties an opportunity to submit comments to the Board on Version 13 Master TPS Agreement by June 30, 1999, with the expectation that this matter would be returned to the Board's July 7, 1999 agenda for further consideration by the Board.

At its June 24, 1999 public agenda meeting the Board determined to suspended the evidentiary hearing process it approved at its June 16, 1999 agenda meeting on the fee structures proposed by the electric utilities in their November 19, 1998 draft Third Party Supplier Agreements. The Board also determined to permit the filing of comments by the parties to the above docketed matter regarding the Master Third Party Supplier Agreement, Version 13 submitted by the four New Jersey electric utilities. The Board also determined that any such comments, whether in support, opposition or otherwise, were to be filed with the Board and served on all parties no later than the close of business on June 30, 1999.

By June 30, 1999 the Board received comments on Version 13 of the TPS Agreement from the Division of the Ratepayer Advocate (RPA) , the New Jersey Business Users (NJBUS), and Exelon Energy¹ . By July 7, 1999 the Board also received reply comments from Conectiv Electric, Public Service Electric and Gas Company, GPU Energy, and Rockland Electric. The comments focused on both fee and non-fee related issues regarding Version 13 of the TPS Agreement.

The comments received concerning the TPS Agreement fees indicated that the imposition of excessive or duplicative fees on TPSs may negatively impact retail competition at its very start and could become a barrier to entry into the New Jersey electric marketplace. These parties argued that the Board should remove these fees from Version 13 of the TPS Agreement.

The RPA, while agreeing that fees could be anti-competitive, indicated that for the sake of not delaying retail competition, it would not object to the imposition of the proposed TPS fees as set forth in Appendix E of the TPS Agreement Version 13 for one year, subject to a evidentiary hearing proceeding to commence no later than August 1, 2000, in which the electric utilities would provide financial data to support their TPS fees, and in which the burden of the proof as to the need for the TPS fees and the reasonableness thereof would rest on the electric utilities. The suggested proceeding would also include a review of any transition costs that the Board has approved, or will in the future approve, for collection from customers and TPSs in the utilities' specific restructuring, stranded cost unbundled rates dockets to ensure that there in no double recovery of TPS fees. The RPA also suggested that the proceeding should also consider whether the electric utilities are earning a reasonable rate of return without the imposition of TPS fees subsequent to the last base rate case. The RPA indicated that the Board should also create a quarterly tracking mechanism to monitor the costs for which TPS fees are charged as well as the revenues the electric utilities receive from the fees and from other sources, including transition costs, and further argue

¹ We note that Exelon Energy moved to intervene in this restructuring proceeding on February 24, 1999, and was granted participant status by the Board, on March 18, 1999.

that these fees should be uniformly charged.

The non-fee related comments addressed other issues including the following: the TPS Agreement should be governed by a tariff; the Agreement should be as uniform as possible across all New Jersey electric utility's service territories; the Board should institute a proceeding on allowing the customer to receive customer account services from the TPS instead of the electric utilities; creditworthiness issues; BPU/FERC jurisdictional issues; modification of several definitions; in Article 5.3, the customer should receive notice of termination of a supplier from the utilities before it is switched to basic generation service; in Article 6.2, notice of supplier default and the basis for default should be provided to a customers; in Article 8.2, twenty days should be shortened to 10 days for any customers with remote meter reading capability; and in Article 12.1 (d), the time frame for resolution of billing disputes is onerous and does not reflect normal business practices.

The electric utilities in responses to the comments indicate that Version 13 of the TPS Agreement is a product of several months of negotiations and compromise, between the New Jersey electric utilities and TPSs (who intend to serve residential, commercial and industrial customers) interested in the New Jersey electric marketplace, and that many of the terms and conditions are interrelated. As such, the electric utilities indicate that when considering version 13's overall reasonableness as one comprehensive document, the Board must bear in mind that, if existing elements of the Agreement are modified or new ones added as proposed in the filed comments, the document can no longer be regarded as the product of consensus.

The Board in reviewing the comments agrees with the electric utilities that Version 13 of the TPS Agreement represents the culmination of several months of intense negotiations and compromise between the electric utilities and TPSs in an attempt to resolve all of the outstanding issues, including the proposed fee structure in the draft TPS Agreements filed by the electric utilities, and to develop a master TPS Agreement for the four New Jersey electric utilities. These negotiations included a "give-and-take" approach among the parties on many of the terms and conditions within the TPS Agreement, including the fee structure, where many of the terms within the Agreement are interdependent and represent the result of mutual compromise by the various parties.

The Board finds that the negotiation process has led to significant progress being made towards the development of a single uniform master TPS Agreement. The New Jersey electric utilities and TPSs have reached consensus on all of the outstanding issues, including the fee structure, and as noted above have opted to support or not oppose the attached Version 13 of the TPS Agreement. This document represents months of complex negotiations by market participants for which this TPS Agreement represents the basis for their commercial relationship as they participate in New Jersey electric marketplace. While we have carefully considered the comments received from the RPA, the NJBUS, and Exelon Energy, on balance we are not persuaded by their arguments and we believe that with the modifications discussed below, the Master TPS Agreement Version 13 is reasonable and should be approved.

Considerable attention in the comments was given to the proposed schedule of fees that the electric utilities will charge the TPSs for the cost of administering the various functions associated with retail choice that each electric utilities would incur on behalf of the TPSs. The Board does not agree with the assertion made by the parties submitting comments that the imposition of TPS fees may negatively impact retail competition at its very start and therefore could become a barrier to entry into the New Jersey electric marketplace. These parties ignore the fact that all actively-participating marketers in these negotiations, who would be affected by these fees, have agreed to support or not oppose the fee structures in Appendix E of the TPS Agreement. In the Board's opinion, this indicates that the proposed fee structure is acceptable to the TPSs who participated in these negotiations, and will not act as a barrier to their entry into the New Jersey retail electric marketplace. It should be noted that the TPSs who participated in this settlement process represent a wide variety of electric suppliers who will serve all customer segments within New Jersey.

Regarding the assertion made in the comments that TPS fees should be removed from the TPS Agreement, the Board has reviewed the record in the restructuring proceedings under the above listed dockets. The record in those proceedings includes a proposal by GPU Energy for its proposed fee structure in its TPS Agreement which it included as part of its original restructuring filing. GPU Energy took the position that it is appropriate for the electric utilities to recover the cost from TPSs of administering the various functions associated with retail choice that each electric utility would incur on behalf of a TPS. The Board has come to the conclusion that it is appropriate that an electric utility be allowed to recover these cost from TPSs via the electric utility's TPS Agreement for costs incurred on behalf of the TPS. However, the Board does concur with the RPA and other parties that any such TPS fees should be cost based, based on the actual cost of the electric utilities performing such functions, and that the electric utilities should not be permitted through TPS fees to "double collect" costs already being collected elsewhere in rates. In this case, the Board is mindful of the fact that we are dealing with the setting of initial rates for which there is no actual cost data and we further note that the TPS fees presented in Version 13 of the TPS Agreement, were a negotiated dollar amount, negotiated against other parts of the consensus document by TPSs, and were not opposed by any of the parties who took part in the settlement negotiations in an effort to have a TPS Agreement in place before the start of retail competition. The Board finds that the proposed fees in Version 13 are lower than the proposed fees in each of the original electric utility's TPS Agreement filing. As such, the Board feels that the initial proposed fee structure as outlined in Appendix E of Version 13 of the TPS Agreement is reasonable and will not act as a barrier to entry into the New Jersey retail market.

As indicated above, the Board is of the viewpoint that TPS fees should be set at levels which reflect the costs to the electric utilities of implementing retail choice and providing related services and functions on behalf of TPSs. While being mindful of the fact that these are initial fees and recognizing the settlement process that took place where the level of the initial fee structure was negotiated as part of a consensus document, the Board feels that in the future every attempt should be made to develop a fee structure that

is cost based, reflecting the actual cost of providing such services. To ensure that in the future an attempt is made to develop a cost based TPS fee structure, the Board feels that the language in each of the electric utilities' Appendix E, letter B be removed and that each New Jersey electric utility be required to make a mandatory filing, rather than a voluntary filing as proposed, to adjust its TPS fee structure. This mandatory proceeding will take place within one year, starting August 1, 2000, and will be subject to an evidentiary hearing process where each electric utility will make a filing with the Board regarding its current fee structure or a request to adjust its fee structure. The proceeding will be limited to a review of the costs associated with an electric utility administering the various functions associated with retail choice that each electric utility would incur on behalf of an TPS, and will not include a review of transition costs approved by the Board, a revisitation of any aspect of our decisions pertaining to each electric utilities' rate unbundling, stranded costs and restructuring proceedings, and/or a review of an electric utility's earnings, as proposed by the RPA. During this mandatory proceeding, the RPA and all parties will have the opportunity to make their case to the Board as to whether TPS fees are reasonable or if the level of the TPS fees are excessive. As part of this review, we will consider the extent, if any, to which certain electric utility costs related to the implementation of retail choice and providing related services and functions on behalf of TPSs, are already explicitly reflected in each electric utilities' rates or cost deferral mechanisms, in order to avoid double-collection.

Based on the foregoing, the Board **HEREBY ORDERS** that the language in Appendix E, letter B from the Version 13 of the master TPS Agreement be removed. The Board **HEREBY ORDERS** that each electric utility shall make a mandatory filing, no later than August 1, 2000 to review its initial TPS fee structure. The scope of the proceeding shall be limited to a review of the costs associated with an electric utility administering the various functions associated with retail choice that each electric utility would incur on behalf of an TPS. The Board **HEREBY FINDS** that on an annual basis thereafter, if applicable, an electric utility may petition the Board for an administrative adjustment in the fees it charges to Third Party Suppliers, to reflect current costs or anticipated costs administering the various functions associated with retail choice that each electric utilities would incur on behalf of an TPS. Such a request will be subject to applicable Board rules and procedures. No fee adjustment shall be implemented without receipt of Board approval. The Board **HEREBY FINDS** that new TPS Agreement fees, if proposed by an electric utility, must be subject to Board approval.

The Board **HEREBY APPROVES** Version 13 Master Third Party Supplier Agreement with the above modification, including each of the four electric utilities Load Profile methodologies referenced in Article 9.1 of the TPS Agreement. The Board **HEREBY ORDERS** each electric utilities to make a final company specific TPS Agreement compliance filing using Version 13, by no later than August 6, 1999. In Appendix D, each company must include all load profiling and load and transmission determination methodologies. The Board **HEREBY ALLOWS** Rockland Electric to make a modified company specific TPS compliance filing using version 13. The Board find that Rockland Electric should be given the ability to make changes to the Version 13 TPS Agreement for various provisions of the Agreement that would involve the New York Power Pool/New York Independent System Operator or process and

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procedures dictated by Rockland's unique integrated system,

The Board **HEREBY ORDERS** each New Jersey electric utility to submit language to be included in its Tariff that include the following provisions:

- The TPS Agreement will be governed by reference by the electric utility's tariff;
- An electric utility must offer the same TPS Agreement to all TPSs who request to provide competitive energy supply to retail customers in its service territory;
- All modifications to an electric utility's TPS Agreement must be approved by the Board prior to implementation. Modifications other than TPS fee changes shall be pursuant to the following procedure:
 - An electric utility proposing to modify its TPS Agreement shall file a request with the Board;
 - The RPA, as well as all TPSs licensed as a Electric Power Suppliers in New Jersey must receive the request within 48 hours;
 - Within 17 days of the request filed with the Board the RPA and/or all TPSs who wish to contest the electric utility's request, must submit their reasons for contesting the modification in writing to the Board;
 - Within 45 days of the filing the Board may issue a suspension order that the electric utility's request to modify its TPS Agreement needs further study, thus putting the request on hold, pending future action by the Board;

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- If the Board does not make take action on the request for modification within 45 days of the filing, the electric utility may implement the modification to its TPS Agreement; and
- In an event the Board does not act within the 45 days of the filing, the Board also reserves the right to make a determination on the request in the future.

DATED: 8/17/99

BOARD OF PUBLIC UTILITIES
BY:

SIGNED
HERBERT H. TATE
PRESIDENT

SIGNED
CARMEN J. ARMENTI
COMMISSIONER

SIGNED
FREDERICK F. BUTLER
COMMISSIONER

ATTEST: _____
SIGNED
MARK W. MUSSER
SECRETARY

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